

## **REMARKS**

Applicant respectfully requests reconsideration of the present Application. Reconsideration of the present application in view of the following remarks and above amendments is respectfully requested.

### **Claim Objection**

Claims 18-21 and 25-26 stand objected to because of inconsistent use of “one or more computer-storage media.” Applicant amends claims 18-21 and 25-26 to use the term “one or more computer-storage media” consistently.

### **Rejections based on 35 U.S.C. § 112**

#### A) Applicable Authority

Paragraph two of section 112 states: “[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.” A proper indefiniteness rejection requires an analysis of whether the language of the claim is such that a person of ordinary skill in the art could not interpret the metes and bounds of the claim so as to understand how to avoid infringement. See MPEP § 2173.02.

#### B) Indefiniteness Rejection

Claim 27 stands rejected under 35 U.S.C. § 112, second paragraph. Applicant does not agree with the Office’s indefiniteness rejection. However, Applicant clarifies the scope of claim 27 by amending claim 27.

Claim 27 is amended to clarify that the output queue receives an acknowledgement receipt that includes a window size available at a destination queue. Because

the claim clearly recites the interaction between the output queue and the destination queue, Applicant respectfully requests withdrawal of the indefiniteness rejection.

**Rejections based on 35 U.S.C. § 101**

A) Applicable Authority

Section 101 states: “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” The judicial exceptions prohibit patents on abstract ideas, laws of nature, and natural phenomena. Recently, the Court of Appeals for the Federal Circuit applied a machine-or-transformation test to find that a non-machine implemented risk management method was not patent-eligible subject matter because it failed to transform a thing to a different state. *In re Bilski*, 545 F. 3d 943 (Fed. Cir. 2008).

B) Non-statutory Subject Matter Rejection

Claims 1-4 and 7-12 stand rejected under 35 U.S.C. § 101 because the claimed invention is putatively directed to non-statutory subject matter.

Independent Claim 1 is amended. Amended claim 1 recites a method that is performed by a communication engine that connects at least one computer data source and a destination (e.g. a storage server). Because each step of claim 1 is performed by a communication engine, Applicant respectfully submits that amended independent claim 1 recites statutory subject matter. Depended claims 2-4 and 7-12 also recite statutory subject matter at least by virtue of their dependence on independent claim 1, which recites a statutory process. Accordingly, Applicant respectfully requests withdrawal of the non-statutory subject matter rejection of claims 1-4 and 7-12.

**Rejections based on 35 U.S.C. § 103(a)**

A) Applicable Authority

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” The Supreme Court in *Graham v. John Deere* counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1 (1966). To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in *Graham* and to provide some reason, or suggestions or motivations found either in the prior art references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the prior art reference or to combine prior art reference teachings to produce the claimed invention. See *Application of Bergel*, 292 F. 2d 955, 956-957 (CCPA 1961). Recently, the Supreme Court elaborated, at pages 13-14 of the *KSR* opinion, it will be necessary for [the Office] to look at interrelated teachings of multiple [prior art references]; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by [one of] ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the [patent application].” *KSR v. Teleflex*, No. 04-1350, 550 U.S. 398 (2007).

B) Obviousness Rejections Based on U.S. Patent No. 6,857,053 (“Bolik”).

Claims 1, 7, 10, 12, 18, and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bolik. Applicant respectfully traverses this rejection because the prior art,

including Bolik fails to describe or suggest all elements of the inventions of amended independent claims 1 and 18.

Amended independent claim 1 recites a method for initiating the transmission of data. The method comprises establishing, via a communication engine, a connection from at least one data source to a destination. In turn, the communication engine generates sessions to transmit data via the connection from the at least one data source to the destination, where generating sessions comprise invoking an application programming interface and receiving a session acceptance from the destination via the application programming interface. In turn, a set of messages from the sessions for transmission over the connection to the destination are queued. The messages from two sessions from different data sources are combined. The queued set of messages and combined messages are transmitted based upon completion information associated with the queued set of messages.

It is respectfully submitted that the cited prior art, including Bolik, fails to describe or suggest, among other things, *combining messages from at least two separate sessions for the destination having different data sources to generate a combined message stream; and transmitting messages from the queued set of messages and the combined messages based upon completion information associated with the queued set of messages stored in a queue at a dispatcher;* as recited in amended independent claim 1.

The Office relies upon Bolik, at col. 3, ll. 12-45; col. 4, ll. 53-56; col. 5, ll. 65-67; and col. 6, ll. 3-37. The cited portions of Bolik describe creating backup groups at a backup server. In Bolik, describes a backup client executing at the client devices to generate group identifiers. Nothing in Bolik describes or suggests combining messages from at least two separate sessions for the destination having different data sources to generate a combined

message stream or transmitting messages from the queued set of messages and the combined messages based upon completion information associated with the queued set of messages stored in a queue at a dispatcher.

Unlike Bolik, the invention of amended independent claim 1, requires, among other things, combining messages from at least two separate sessions for the destination having different data sources to generate a combined message stream and transmitting messages from the queued set of messages and the combined messages based upon completion information associated with the queued set of messages stored in a queue at the data source. Bolik fails to expressly or inherently describe or suggest all elements of the invention of amended independent claim 1. Accordingly, for at least the above reasons, Applicant respectfully requests withdrawal of the obviousness rejection and allowance of amended independent claim 1.

Dependent claims 2-4 and 7-12 further define novel features of the invention of amended independent claim 1 and each depend, directly or indirectly, from amended independent claim 1. Accordingly, for at least the reasons set forth above with respect to amended independent claim 1, dependent claims 2-4 and 7-12 are believed to be in condition for allowance by virtue of their dependency. *See*, 37 C.F.R. §1.75(c). As such, withdrawal of the obviousness rejection of dependent claims 2-4 and 7-12 is respectfully requested.

Amended independent claim 18 recites one or more computer-readable media storing instructions for performing a method to send a transmissible message over a communication network. The method comprises establishing a connection from at least one data source to a destination and establishing sessions to transmit data via the connection from the at least one data source to the destination, where establishing sessions comprise invoking an application programming interface and receiving a session acceptance from the destination. In

turn, at least one message from the sessions for transmission over the connection to the destination is queued, where queuing the at least one message comprises queuing the at least one message in at least one input/output buffer. The messages from two sessions from different data sources are combined. The communication of the at least one queued message and the combined message are regulated based upon completion information associated with the at least one input/output buffer.

It is respectfully submitted that the cited prior art, including Bolik, fails to describe or suggest, among other things, *combining messages from at least two separate sessions for the destination having different data sources to generate a combined message stream; and regulating the communication of the at least one queued message and the combined messages based upon completion information associated with the at least one input/output buffer*, as recited in amended independent claim 18.

The Office relies upon Bolik to render the invention of amended independent claim 18 unpatentable. As discussed above, the cited portions of Bolik describes archiving data at a backup server and defining backup groups. However, nothing in Bolik describes or suggests combining messages from at least two separate sessions for the destination having different data sources to generate a combined message stream or regulating the communication of the at least one queued message and the combined messages based upon completion information associated with the at least one input/output buffer.

Unlike Bolik, the invention of amended independent claim 18, requires, among other things, combining messages from at least two separate sessions for the destination having different data sources to generate a combined message stream and regulating the communication of the at least one queued message and the combined messages based upon completion

information associated with the at least one input/output buffer. Bolik fails to expressly or inherently describe or suggest all elements of the invention of amended independent claim 18. Accordingly, for at least the above reasons, Applicant respectfully requests withdrawal of the obviousness rejection and allowance of amended independent claim 18.

Dependent claims 19-21 and 25-26 further define novel features of the invention of amended independent claim 18 and each depend, directly or indirectly, from amended independent claim 18. Accordingly, for at least the reasons set forth above with respect to amended independent claim 18, dependent claims 19-21 and 25-26 are believed to be in condition for allowance by virtue of their dependency. *See*, 37 C.F.R. §1.75(c). As such, withdrawal of the obviousness rejection of dependent claims 19-21 and 24-26 is respectfully requested.

Amended independent claim 27 recites one or more computer-readable media storing instructions for transporting large data sets across a communication network. The method comprises establishing one or more sessions between a plurality of data sources and a storage server by transmitting session requests from output queues at a dispatcher to a destination queue at the storage server and transmitting an acknowledgement that the session requests are accepted from the storage server to the data source. Data messages received from each data source are buffered at an assigned output queue until the assigned output queue is full. Messages from at least two separate sessions for the destination having different data sources are combined to generate a combined message stream. In turn, the data messages and the combined messages are transmitted to the destination queue at the storage server. An acknowledgment receipt of the data messages is received, at the assigned output queue, from each data source. The acknowledgement receipt includes a window size remaining at the destination queue. Additional

data messages and additional combined message from the data sources are transmitted to the destination queue at the storage server based on the window size included in the acknowledgment receipt.

It is respectfully submitted that the cited prior art, including Bolik, fails to describe or suggest, among other things, *combining messages from at least two separate sessions for the destination having different data sources to generate a combined message stream; and transmitting the data messages and the combined messages to the destination queue at the storage server;* as recited in amended independent claim 27.

The Office relies upon Bolik to render the invention of amended independent claim 27 unpatentable. As discussed above, the cited portions of Bolik describes a backup server that stores backup data in groups. Nothing in Bolik describes or suggests, among other things, combining messages from at least two separate sessions for the destination having different data sources to generate a combined message stream or transmitting the data messages and the combined messages to the destination queue at the storage server.

Unlike Bolik, the invention of amended independent claim 27, requires, among other things, combining messages from at least two separate sessions for the destination having different data sources to generate a combined message stream; and transmitting the data messages and the combined messages to the destination queue at the storage server. Bolik fails to expressly or inherently describe or suggest all elements of the invention of amended independent claim 27. Accordingly, for at least the above reasons, Applicant respectfully requests withdrawal of the obviousness rejection and allowance of amended independent claim 27.

C) Obviousness Rejections Based on Bolik in view of U.S. Patent Publication No. 2003/0079121 ("Gilman").

Claims 2-4, 11, 19-21, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bolik in view of Gilman. Applicant respectfully traverses this rejection because the prior art, including Bolik and Gilman fails to teach or suggest all elements of the inventions of amended independent claims 1 and 18.

Claims 2-4 and 11 depend from amended independent claim 1. Claims 19-21 and 26 depend from amended independent claim 18. As discussed above, Bolik fails to describe or suggest all the elements of amended independent claims 1 and 18. Accordingly, claims 2-4, 11, 19-21, and 26 are patentable over Bolik for at least the above-cited reasons. The addition of Gilman fails to cure the deficiencies of Bolik with respect to the elements of amended independent claims 1 and 18. As such, Applicant respectfully requests withdrawal of the obviousness rejection and allowance of dependent claims 2-4, 11, 19-21, and 26.

D) Obviousness Rejections Based on Bolik in view of U.S. Patent No. 6,223,207 ("Lucovsky").

Claims 8-9 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bolik in view of Lucovsky. Applicant respectfully traverses this rejection because the prior art, including Bolik and Lucovsky fail to teach or suggest all elements of the inventions of amended independent claims 1 and 18.

Claims 8-9 depend from amended independent claim 1. Claim 25 depends from amended independent claim 18. As discussed above, Bolik fails to teach or suggest all the elements of amended independent claims 1 and 18. Accordingly, claims 8-9 and 25 are patentable over Bolik for at least the above-cited reasons. The addition of Lucovsky fails to cure

the deficiencies of Bolik with respect to the elements of amended independent claims 1 and 18. As such, Applicant respectfully requests withdrawal of the obviousness rejection and allowance of dependent claims 8-9 and 25.

**CONCLUSION**

For at least the reasons stated above, the pending claims are now in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned to resolve the same. It is believed that no fee is due, however, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112.

Respectfully submitted,

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